

News and Events

**KELLEY
DRYE**

FEBRUARY 2010
WASHINGTON, D.C. OFFICE

IN THIS ISSUE

KELLEY DRYE NEGOTIATES
RECOVERY FOR CROWN
FARM RETAIL ON MARYLAND
REAL ESTATE PROJECT IN
DELAWARE BANKRUPTCY
PROCEEDINGS
Page 1

KELLEY DRYE &
WARREN LLP
Page 2

KELLEY DRYE SPEAKS
Page 3

KELLEY DRYE NEWS
Page 3

AN EXPENSIVE PROBLEM:
EMPLOYMENT CLASS
ACTION
Page 4

To be added to our
mailing list, please email
sminkoff@kelleydrye.com

Kelley Drye & Warren LLP
3050 K Street, NW
Suite 400
Washington, D.C. 20007
(202) 342-8400

Other Offices:
New York, Chicago, Stamford,
Parsippany, Brussels;
Affiliate Office: Mumbai

www.kelleydrye.com

Kelley Drye Negotiates Recovery for Crown Farm Retail on Maryland Real Estate Project in Delaware Bankruptcy Proceedings

Kelley Drye represented **Crown Farm Retail**, an affiliate of Bethesda, Maryland-based Spectrum Partners, in negotiating recovery of Crown Farm Retail's investment in Crown Farm, a 180 acre undeveloped tract in Gaithersburg, Maryland. The favorable settlement was approved by the Bankruptcy Court of Delaware in bankruptcy reorganization proceedings in late December 2009.

In 2005, KB Homes and Centex Homes purchased Crown Farm, which was approved for a mixed use development with more than 2,000 residential units. Crown Farm Retail held the development rights to 320,000 square feet of retail space on the property.

Due to the economic slowdown and weak housing market, site development stalled and the homebuilder property owners declared bankruptcy in May 2009. In bankruptcy proceedings, Kelley Drye real estate, bankruptcy and litigation professionals acted to protect Crown Farm Retail's interests against the competing claims of KB Homes and Centex Homes, the homebuilders' parent entities, and a consortium of national banks. While Crown Farm Retail recouped its investment, the new owners of Crown Farm purchased the property for roughly half of the original price of \$140 million. Marc Solomon, a principal of Crown Farm Retail, said that Crown Farm Retail's recovery would not have been possible without the "creative, determined and committed" attorneys at Kelley Drye.

For more information, please contact **Joe Hoffman** at jhoffman@kelleydrye.com or **John E. Heintz** at jheintz@kelleydrye.com.

Other Recent Kelley Drye Real Estate Transactions in the Washington D.C. Office Include:

Floridian Condominium Project. Kelley Drye represented the senior lender in a \$15.6 million senior loan secured by a pledge agreement collateralized by a loan acquired from Bank of America and a deed of trust on the majority of units at the 118-unit Floridian condominium project located in the U Street corridor of Washington, DC. In this unconventional transaction, the borrower used the loan proceeds, together with a mezzanine loan which required an intercreditor agreement with the senior lender, to purchase the existing Bank of America loan position and then acquire the property through foreclosure on the next day.

For more information, please contact **Joe Hoffman** at jhoffman@kelleydrye.com.

Adelphi Shopping Center. Kelley Drye recently represented StreetSense Development Partners LLC in its purchase of a majority interest in the 41,245 square-foot Adelphi Shopping Center located in Prince George's County, Maryland for \$3.9 million. Adelphi Shopping Center is best known as the home of the original Ledo's Pizza near the University of Maryland in College Park.

For more information, please contact **Joe Hoffman** at jhoffman@kelleydrye.com.

Condemnation in Montgomery County, MD. Kelley Drye recently represented a local real estate developer in its sale for \$32.7 million of an industrial flex/warehouse property in Gaithersburg, Maryland to Montgomery County, Maryland. Montgomery County purchased the 29 acre site for use as its primary liquor warehouse

Kelley Drye & Warren LLP

Founded in 1836, Kelley Drye is proud to represent some of the world's most accomplished businesses and organizations. The firm has more than 375 attorneys and professionals throughout our offices in New York; Washington, D.C.; Chicago; Stamford; Parsippany; and Brussels, and an affiliate office in Mumbai.

Our practice areas include:

- Corporate
- Financing Transactions
- Venture Capital
- Private Equity
- Mergers & Acquisitions
- Securities
- Real Estate
- Tax
- Advertising
- International Trade
- Litigation/Arbitration
- Information Technology
- Telecommunications
- VoIP/Wireless/Satellite
- Outsourcing
- Government Contracts
- Intellectual Property
- Environmental
- Antitrust
- Bankruptcy/Restructuring
- Executive Compensation
- Labor & Employment
- Employee Benefits
- Government Relations
- Trade Associations
- Estate Planning
- Insurance Recovery
- Aviation
- Food and Drug
- Privacy

Recent Kelley Drye Real Estate Transactions *(continued)*

and distribution facility. Thus, in addition to the transaction being significant due to the infrequency of such deals in the current economic climate, the sale was notable due to the County's exercise of its threat of condemnation and power of eminent domain. For more information, please contact **Joe Hoffman** at jhoffman@kelleydrye.com.

Refinancing of GSA-Leased Virginia Property. Kelley Drye represented a local real estate owner in the refinancing of a commercial office building in Vienna, Virginia with a \$4.3 million commercial mortgage. In

addition to structuring two joint ventures with an Alex Brown affiliate and Potomac Capital, this transaction involved the negotiation of a \$16.7 million loan from Virginia Commerce Bank. For more information, please contact **Joe Hoffman** at jhoffman@kelleydrye.com.

Kelley Drye's D.C. Business Group has also seen an Uptick in Corporate Transactions including the following:

Global Telecom & Technology, Inc. Kelley Drye represented Global Telecom & Technology, Inc. (NASDAQ: GTLT), a leading global network integrator that provides its clients with a broad portfolio of wide-area network and IP transit services, in its acquisition of privately-held WBS Connect, LLC, a Colorado-based enterprise telecommunications service provider. The acquisition closed in early December 2009. Kelley Drye also represented GTT in its acquisition of certain off-net circuit assets of Global Capacity, Inc. (NASDAQ: CGSY) and its affiliates. The acquisition, which is subject to regulatory approvals and other closing conditions, is expected to close in the first quarter of 2010. Additionally, Kelley Drye assisted in negotiating GTT's senior debt facility with Silicon Valley Bank, which was entered into in connection with these acquisitions. For more information, please contact **Jay Schifferli** at jschifferli@kelleydrye.com.

addition to structuring two joint ventures with an Alex Brown affiliate and Potomac Capital, this transaction involved the negotiation of a \$16.7 million loan from Virginia Commerce Bank.

For more information, please contact **Joe Hoffman** at jhoffman@kelleydrye.com.

Lease Negotiation. Kelley Drye represented a client that provides personal business services in negotiating a 20,000+ square foot lease for its new office suites with construction beginning later this year. Given the business climate and the long lead time for construction, Kelley Drye, working with the client and its broker, pushed for and secured the tenant improvement allowance with several innovative protective measures that will serve the client well as it undertakes this major project.

For more information, please contact **Allan Weiner** at aweiner@kelleydrye.com.

K12 Inc. Kelley Drye represented K12 Inc. (NYSE: LRN), an online education provider, in its bid to acquire the assets of CompassLearning, Inc., a subsidiary of The Readers Digest Association, Inc., in a Section 363 auction conducted in connection with The Readers Digest Association, Inc. Chapter 11 bankruptcy proceeding. For more information, please contact **Joe Hoffman** at jhoffman@kelleydrye.com.

Nautilus Neurosciences, Inc. Kelley Drye recently represented Nautilus Neurosciences, Inc. (Nautilus), a neurology-focused specialty pharmaceutical company and new portfolio company of long-standing private equity client, Tailwind Capital Partners, in connection with the closing of a transaction involving the acquisition of U.S. and Canadian rights, and new licensing agreements, with respect to certain diclofenac products, including CAMBIA*, a product recently approved by the FDA for the treatment of acute migraine headache pain, and PRO-571, a product

development candidate for the treatment of acute pain.

For more information, please contact **Jay Schifferli** at jschifferli@kelleydrye.com.

Vidsys, Inc. Kelley Drye represented Vidsys, Inc., a leading provider of Physical Security Information Management (PSIM) solutions for safety, security, commercial, surveillance, military and transportation organizations, in its \$4 million Series C Preferred Stock financing round. Existing investors Flybridge Capital Partners, Motorola, Inc. and JVAX Investment

KELLEY DRYE SPEAKS

Congressional Forum: The Legislative Agenda for 2010. In January, the government relations practice hosted an informative seminar on the political landscape and current legislative priorities for 2010. Kelley Drye's Government Relations and Public Policy practice conducts this event and other seminars throughout the year to provide clients and friends with the opportunity to hear first-hand from leading policymakers from Capitol Hill. Some of this year's speakers included Senator Richard Burr (R-NC), Representatives Rick Boucher (D-VA), Joseph Crowley (D-NY), Kevin McCarthy (R-CA), Peter Roskam (R-IL), Allyson Schwartz (D-PA).

For more information, please contact **Dana Wood** at dwood@kelleydrye.com.

Association of Corporate Counsel. Kelley Drye and the Association of Corporate Counsel hosted a seminar on February 9, 2010, on important legal issues and best practices for leveraging social media. Topics included using social media and other promotions involving user-generated content and practical advice on how to minimize legal liability. Kelley Drye partner David Ervin and associate Gonzalo Mon served as speakers at the program. Guest speakers included, Josephine Belli-Marinis, Associate General Counsel & Litigation Counsel for Combe Inc. and Reginald M. Rasch, General Counsel of LinkShare Corporation.

For more information, please contact **David Ervin** at dervin@kelleydrye.com.

Group, LLC participated in the round.

For more information, please contact **Joe Hoffman** at jhoffman@kelleydrye.com.

Telarix, Inc. Kelley Drye represented **Telarix, Inc.**, a Northern Virginia-based company providing worldwide cost optimization services in the telecommunications industry, in negotiating and documenting several modifications to its banking relationship with Comerica Bank, to enable the company to continue to expand its operations.

For more information, please contact **Joe Hoffman** at jhoffman@kelleydrye.com.

Privacy Law Seminar. In November, Kelley Drye held the 2nd Annual Privacy Law Seminar entitled "Privacy Law Paradigm Shift: Policymakers Respond to Rapidly Evolving Technologies." Kelley Drye, which maintains one of the leading privacy practices in the country, and other leaders in the field provided their insights and analysis on how new privacy laws, pending legislation, and enforcement trends will affect virtually every business in the U.S., including telecommunications providers, advertisers, online and offline retailers, web publishers, and their service providers. To hear a recording of the program, please visit http://www.kelleydrye.com/seminars_events/seminars_events_data/000127.

For more information, please contact **Dana Rosenfeld** at drosenfeld@kelleydrye.com.

Making Sense of the FCC's Network Neutrality NPRM. Kelley Drye hosted a webinar on the recently released FCC notice of proposed rulemaking (NPRM), and request for comments on the proposed network neutrality rules and a number of topics relating to the challenge of preserving a "free and open" Internet. Kelley Drye attorneys John Heitmann, Todd Daubert and Joan Griffin provided an insightful discussion of the proposed rules, how they may impact businesses, and what companies can do about it. To hear a recording or to download materials from the event, please visit http://www.kelleydrye.com/seminars_events/seminars_events_data/001287.

For more information, please contact **John Heitmann** at jheitmann@kelleydrye.com.

KELLEY DRYE NEWS

Kelley Drye has been chosen as a 2010 "Go-To" law firm in *Corporate Counsel's* reference guide, In-House Law Departments at the Top 500 Companies. Kelley Drye was selected for this honor by some of its top clients for the firm's Corporate Transactions/ Mergers & Acquisitions, Intellectual Property, Labor and Employment and Litigation practice groups.

Kelley Drye partner **Paul Rosenthal** was ranked as one of *Washingtonian* magazine's "Top Lawyers" in the field of International Trade. The December 2009 issue of the magazine listed 800 of Washington, D.C.'s best legal minds in 29 legal categories.

Kelley Drye partner **Brad Mutschelknaus** was named as one of *SmartCEO* magazine's "D.C. Legal Elite" in the area of Telecommunications. This year's "Legal Elite" list was selected by the magazine's readers, consisting of 15,000 top-level business leaders in the Washington and Baltimore metropolitan areas.

Kelley Drye was pleased to welcome **Joan (Jodie) Z. Bernstein** and **Dana B. Rosenfeld**, two of the country's preeminent consumer protection lawyers. Both advise clients across the spectrum of privacy and consumer protection law, and Ms. Rosenfeld will serve as chair of Kelley Drye's Privacy and Information Security practice, part of the Advertising and Marketing group based in the firm's Washington, D.C. office. Ms. Bernstein was recently named a Lifetime Achiever by *The American Lawyer*. The publication honored Ms. Bernstein among a select group of attorneys recognized for their "brilliant legal skills and a higher calling," combining careers in the private sector with longtime commitments to public service. Additionally, the firm welcomed **Andrea Calvaruso** as a partner in the firm's New York City office and chair of the firm's Trademark and Copyright practice group.